



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant states that the post office was asked to have the application for dispute resolution and notice of hearing (the “Materials”) sent by *registered mail*. The Tenant states that she believed that the Materials were sent by registered mail and required a signature for delivery. The Tenant provides a tracking number supplied by the post office.

Section 89 of the Act provides that an application for dispute resolution, if sent by mail, must be sent by registered mail. Section 71 of the Act provides that it may be found that a document not served in accordance with section 89 is sufficiently given or served for the purposes of this Act. Although the postal document provides a tracking number that is not associated with tracking numbers for registered mail, given the Tenant’s evidence that a signature for delivery was required I find that the Tenant sufficiently served the Landlord. The Tenant was given full opportunity to be heard, to present evidence and to make submissions on its application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on or about September 2012 and ended on November 1, 2016. The security deposit has been dealt with. The tenancy ended after the Landlord served the Tenant's with a two month notice to end tenancy for landlord's use (the "Notice"). Rent of \$1,100.00 was payable monthly and the Tenant was provided the equivalent of one month's rent as compensation. The Notice has two reasons indicated: the landlord or a close family member of the landlord will occupy the unit; or, the landlord intends to convert the unit for use by a caretaker, manager or superintendent of the residential property. The Landlord informed the Tenant that the Landlord, a sibling or the property manager would be moving into the unit.

The Tenant attended the unit in January 2017 and discovered that the tenant who used to occupy the lower suite in the building had moved into the unit. This was confirmed by the person who answered the door and the presence of the previous lower tenant's child, pets and furnishings. The neighbour informed the Tenant that the Landlord had not been seen at the unit even once after the Tenant moved out. The Tenant claims the equivalent of two months compensation for not using the unit as stated in the Notice. The Tenant also claims a number of other amounts all based on the Landlord not using the unit as stated in the Notice.

Analysis

Section 51(2)(b) provides that if a rental unit is not used for the purpose stated on a notice to end tenancy for landlord's use for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Based on the undisputed evidence of the Tenant I find that the Landlord did not use the rental unit for the reasons stated on the Notice. As such I find

that the Tenant is entitled to compensation of **\$2,200.00**. As the compensation amount for this breach is determined by the Act I find that the Tenant may not seek any other compensation for the same breach. As the Tenant has been successful with its claim for compensation as provided under the Act I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee paid for this application for a total entitlement of **\$2,300.00**. The Tenant is only entitled to claim the filing fee paid for the application being determined herein.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 17, 2017

Residential Tenancy Branch